

1 involvement by SJI.

2 MR. EMMONS: In --

3 JUDGE GONZALEZ: Yeah, that's what bothers me a
4 little because reading the paragraph, the statement says SJI
5 was involved, there's no attempt to really quantify the degree
6 of that involvement. Frankly, reading the paragraph, it seems
7 that TDS was -- and USCC were far more involved than SJI.

8 MR. EMMONS: Your Honor, there's other testimony
9 from other witnesses that will speak to SJI's involvement in
10 that particular matter. Now, this is just Mr. Belendiuk's
11 testimony and he only states what he knew but other -- there
12 are two witnesses from SJI from we're submitting testimony, at
13 least one of them speaks to that so this is not the complete
14 record on that point.

15 MR. SCHNEIDER: Your Honor, if I might be heard on
16 this to --

17 JUDGE GONZALEZ: Surely.

18 MR. SCHNEIDER: -- for three points. First of all,
19 I think Mr. Hardman's characterization of what Mr. Emmons was
20 arguing is a bit off in the sense that what this offered for
21 is in -- with respect to that, to demonstrate the
22 reasonableness or the context of the principles of USCC and
23 TDS's beliefs about what was going on or what their testimony
24 was. We're not going to be asking you to make findings on the
25 fact that SJI was involved to this extent or was not involved

1 to this extent, we're going to be asking you to make findings
2 about plausibility of our witnesses beliefs about what was
3 going on and that the plausibility of the their belief that
4 their testimony was accurate. The second point I'd like to
5 make is, I think we run a very dangerous risk here of making
6 some assumptions about the Commission's actual findings were.
7 I listened to Mr. Hardman state one thing, Mr. Weber qualified
8 it a bit and I might add yet a third diff -- a third view, and
9 I previously told you we're not going to argue -- reargue
10 them, whatever they are, what we're going to do is explain to
11 you the context of the witnesses beliefs about what they
12 testified and I'm -- with respect to this particular
13 testimony, I might note that I think one of the very things
14 TDS and United States Cellular are here for is because they
15 are accused of not having told the whole story. Well, this
16 paragraph gives you the whole story, it gives you the context
17 or the belief that they saw occurring at this time and for us
18 not to have -- I mean, as you prob -- as you note, this does
19 disclose TDS's and United States Cellular's involvement. It
20 does so because in that way they can explain to you the
21 context of their testimony before the ALJ and the context of
22 their representation to the Commission and why it was their
23 belief that they were being candid. I think that in the guise
24 of trying to not reargue findings, we can't throw out a bunch
25 of test -- a lot of testimony that will establish context,

1 establish plausibility, establish a reasonableness of beliefs,
2 otherwise you won't -- you will not have the foundation for
3 which you're going to have to assess the credibility of
4 testimony from these witnesses.

5 MR. WEBER: Your Honor, I believe we've gotten a
6 little bit off what my real objection to this paragraph is and
7 to me the objection is more just the paragraph is irrelevant
8 to the issues designated. From this paragraph we don't see
9 into the minds of the USCC witnesses in any way.
10 Mr. Belendiuk who is making the statement is not a USCC
11 employee or official or a TDS employee or official and the
12 designated issues are to look into whether or not those
13 TDS/USCC officials made misrepresentation. This -- we can't
14 see into their minds, we do not know whether the TDS/USCC
15 officials from this paragraph knew whether SJI was making any
16 efforts to get a bank letter or not. It just is not probative
17 of the designated issues and there is nothing in the Bureau's
18 Bill of Particulars which goes to any issue about the bank
19 letter.

20 MR. HARDMAN: If I may, Your Honor, I would just add
21 one further note, in Paragraph 27 of the Commission's last
22 order in the LaStar case, among other things, it states that
23 the little involvement that SJI claimed proved to be
24 insubstantial and lacking in credibility and it's referring to
25 the involvement in the LaStar application proceeding and this

1 paragraph which is symptomatic of a number of other paragraphs
2 is just -- is just a flat reargument of that finding.

3 MR. KIRKLAND: Your Honor, if I could be heard --

4 JUDGE GONZALEZ: Yes, sir.

5 MR. KIRKLAND: -- on behalf of SJI, what I'm having
6 real trouble with as I listen to this colloquy is envisioning
7 how this approach would apply to my client. As Your Honor is
8 aware, my client has had similar allegations made about their
9 candor and there's at least some possibility in the future
10 that we may be holding a similar hearing with respect to my
11 client and to the extent that you accept Mr. Hardman's
12 position that you are bound by a finding that SJI essentially
13 did nothing at all in the LaStar proceeding then that disposes
14 your ability to consider any evidence about anything as SJI
15 did, I'm having a hard time seeing how my client can exculpate
16 themselves and I think that's merely the flip side of what
17 USCC is saying here, that they cannot exculpate themselves if
18 they cannot show the underlying facts that corroborate the
19 plausibility of their beliefs.

20 JUDGE GONZALEZ: Well, you know, I'm inclined to
21 agree because I think otherwise this would be an exercise in
22 futility. I mean, if the Commission has already decided,
23 according to Mr. Hardman, that SJI had virtually no
24 participation, what are we here for?

25 MR. HARDMAN: We're here to find, Your Honor, if

1 | there are -- if there is evidence -- and this is consistent
2 | with the Commission having put the burden of proof on TDS,
3 | evidence in mitigation or some reason behind --

4 | JUDGE GONZALEZ: But I don't know how we can address
5 | a mitigation issue without it -- admittedly I think this
6 | paragraph may be a poor example because to some extent I agree
7 | with Mr. Weber, I'm not really sure this says very much about
8 | the state of mind of anybody at TDS and USCC. I mean, if I
9 | decide that the paragraph should be stricken I'd like -- I
10 | would strike it more on that basis than any other and I would
11 | assume that whatever information TDS/USCC wants to get into
12 | the record will be brought in another exhibit somewhere,
13 | through someone else's testimony, but my problem is pretty
14 | much with Mr. Weber's objections.

15 | MR. SCHNEIDER: Well, if I could be heard on that,
16 | Your Honor.

17 | JUDGE GONZALEZ: Yes, sir.

18 | MR. SCHNEIDER: One of the things that everybody had
19 | noted this morning is that the credibility of these witnesses
20 | will be at issue and one of the things this testimony will do
21 | is talk about the beliefs of the witnesses and you will -- you
22 | may have a statement from a witness who directly states, I was
23 | aware through Person A that this was going on, that a certain
24 | occurant -- event would occur. That Person A will also
25 | testify about what it is they did and what it is they informed

1 certain people about. That may relate to this paragraph which
2 corroborates things. For example, if one of the U. S.
3 Cellular or TDS witnesses, in this case, perhaps Mr. Naftelan
4 who is, in fact, is a counsel for United States Cellular, or
5 Don Nelson who is a principle of United States Cellular, is of
6 the impression that SJI is involved, this paragraph
7 corroborates their opinion because it shows the context of
8 their belief about this particular action and while I can
9 understand that there may -- that -- I agree much -- I can
10 follow Mr. Weber's objection much more which is that he wants
11 to know the relevance of this particular paragraph along the
12 line of inquiry you've always -- already indicated isn't
13 irrelevant.

14 JUDGE GONZALEZ: Right, and I think you're
15 addressing that, counsel.

16 MR. SCHNEIDER: And I am, I am, perhaps not doing it
17 too well, or doing it in a long-winded fashion but what I mean
18 to say is, not all evidence is crucial evidence, some of it is
19 small but only important to the extent that it corroborates
20 another witness' statement that says, I was of the impression
21 that someone else was doing something and this will, in a
22 small way but perhaps an important way to you later on,
23 corroborate the fact that this witness was not speaking off
24 the top of his head, that had no basis for believing that,
25 that another witness has also said, yes, I was involved in

1 that activity as well and I can testify as part of that
2 activity that there was a basis for that person to believe
3 that. In this case, the bank letter, it's not offered to show
4 that SJI provided the bank letter or got a bank letter. In
5 fact, it shows the quite the opposite candidly, I mean, that
6 TDS provided the bank letter. What it does show is that there
7 was a basis for certain witnesses to believe that this was not
8 a complete TDS production, that SJI's principles were
9 consulted, were involved. When we testify that way, you may
10 look to find something that either disproves or proves that,
11 this may, to some small extent, prove it. The witnesses all
12 will be available for cross-examination.

13 JUDGE GONZALEZ: I agree, I overrule the objection.

14 MR. SCHNEIDER: Yeah, yeah.

15 JUDGE GONZALEZ: I think it -- I think the points
16 made by Mr. Schneider are well taken. All right, next
17 objection.

18 MR. WEBER: All right, on Paragraph 11, I would
19 strike the first two sentences and the word "therefore" in the
20 third sentence.

21 JUDGE GONZALEZ: Excuse me, first two sentences?

22 MR. WEBER: Right, again as irrelevant. Here
23 Mr. Belendiuk is testifying things that he told to SJI
24 witnesses of SJI personnel, again it does nothing to get us
25 into the heads of the USCC witnesses. There's nothing here

1 that shows that the USCC witnesses or personnel knew
2 Mr. Belendiuk had these discussions with the SJI personnel or
3 that they knew that the SJI personnel would be using them as a
4 -- and an assistance.

5 MR. EMMONS: Your Honor, that's --

6 JUDGE GONZALEZ: Mr. Emmons.

7 MR. EMMONS: -- exactly the same point that you just
8 ruled on, I believe. As Mr. Schneider said, this evidence is
9 offered to show that it is plausible to believe the U. S.
10 Cellular witnesses when they say that it was their
11 understanding that Mr. Belendiuk was communicating with SJI
12 because this evidence shows that Mr. Belendiuk was
13 communicating with SJI, that goes directly to the credibility
14 of the U. S. Cellular witnesses' claimed belief that
15 Mr. Belendiuk was working with SJI and that's precisely the
16 point that Mr. Schneider just made and I think precisely the
17 point that you just ruled on.

18 MR. HARDMAN: Your Honor, if I may --

19 JUDGE GONZALEZ: Mr. Hard -- yes, Mr. Hardman --
20 surely.

21 MR. HARDMAN: -- I also join in the objection, I
22 would again reiterate that the -- the probative value of this
23 is corroboration of state of mind, anything that is relevant
24 to this procedure so attenuated at -- on the other hand, it is
25 so blatantly just an attempt to reargue facts found against

1 | them in the LaStar proceedings that it serves no useful
2 | purpose in this case and it -- to whatever extent that it
3 | arguably does have any role in this proceeding, it's
4 | outweighed by its potential for mischief.

5 | MR. SCHNEIDER: Your Honor --

6 | MR. WEBER: I would go ahead and state also, Your
7 | Honor, that when a USCC witness is making a statement that
8 | they believe or they understood Mr. Belendiuk was having such
9 | conversations with SJI, I would definitely agree that that is
10 | relevant. However, the fact of whether or not those
11 | conversations ever occurred or whether that understanding is
12 | indeed based on fact, is irrelevant. If we're going to look
13 | into their heads to see if they intentionally misrepresented
14 | facts, it doesn't matter whether what they stated is true or
15 | not, it's just the fact that they believed it was true and
16 | I'll allow the statements when it's by a USCC witness. We're
17 | going to have a very large record as it is and I --

18 | JUDGE GONZALEZ: Yeah, I agree, I agree, I find
19 | reason to strike it as well.

20 | MR. SCHNEIDER: Your Honor, may I be heard on that
21 | before you do that?

22 | JUDGE GONZALEZ: Yes, sir.

23 | MR. SCHNEIDER: Because on this specific example I
24 | can give you the precise of example of how it applies, what I
25 | argued to you earlier. In the hearing designation order there

1 is a question, Don Nelson has testified that it was his
2 understanding that requests that were made of him often were
3 at the direction of SJI. He also has testified that at times
4 he was told that the SJI members of the management committee -
5 - or that certain principles of SJI had approved courses of
6 action, okay. He's going to be up here on the stand telling
7 you all the things Mr. Weber just told you he would allow but
8 you're going to asked to find whether or not those statements
9 are credible. Here we have a statement, these witnesses from
10 SJI felt that someone at USCC should review the budget being
11 proposed in LaStar's application. It corroborates what Mr.
12 Nelson is going to tell you about his view of the
13 conversations he had with Mr. Belendiuk. Now, I am not going
14 to argue and USCC and TDS are not going to argue, reargue the
15 points in the designation order -- I'm sorry, in the prior
16 LaStar proceeding but you must certainly understand we are
17 certainly going to argue that Mr. Nelson's beliefs about his
18 statements on the stand were wholly reasonable and this
19 particular issue was not addressed in specificity at the
20 hearing. Now, Mr. Hardman fell back to the old revival, it's
21 of so little weight or whatever, you are perfectly capable of,
22 Your Honor, yourself of evaluating the weight of these
23 evidence and to accuse us of putting it in there for mischief,
24 I think, is unfounded. We are establishing a complete record
25 which the Commission wanted in this case, for you to assess

1 the credibility of our witnesses' testimony. Whether or not
2 we were in -- USCC or TDS were in control of this applicant is
3 wholly irrelevant, you won't find one argument in proposed
4 findings on that effect but --

5 JUDGE GONZALEZ: Yeah, but the problem I have though
6 is that this says really more about Mr. Belendiuk than it does
7 about any TDS principle.

8 MR. EMMONS: May I be heard on that point, Your
9 Honor.

10 JUDGE GONZALEZ: Yeah.

11 MR. EMMONS: Because I think it was Mr. Hardman or
12 maybe it was Mr. Weber who said earlier on, three or maybe
13 four U. S. Cellular principles here and no one else's
14 testimony really matters very much, I would point out that
15 rightly or wrongly, the Commission in the earlier LaStar found
16 that Mr. Belendiuk, who is an attorney, was LaStar's counsel,
17 was really the agent for U. S. Cellular. We also have
18 Mr. Naftelan and Mr. Dan Miller of the firm Kotene and
19 Naftelan who are going to be witnesses in this case, who
20 represented U. S. Cellular who were attorneys for U. S.
21 Cellular. The law of the Commission is, Your Honor, that if
22 there was misconduct on the part of an attorney, that
23 misconduct could be attributed to the licensee or the
24 applicant and while we're convinced in our hearts that there
25 was no misconduct by any attorney or anyone else, as long as

1 | there is even the theoretical possibility that that finding
2 | could be made, then the state of mind and the knowledge of all
3 | such attorneys is relevant, Mr. Belendiuk's state of mind in
4 | his knowledge, Mr. Naftelan's and Mr. Miller's and so I think
5 | --

6 | JUDGE GONZALEZ: Why is that not the case, Mr. Weber
7 | since it is Commission practice and policy to attribute an
8 | agent's activity -- I mean, the lawyer's activity to its
9 | principle -- or to its client, rather?

10 | MR. WEBER: Well, it is -- well, it certainly is
11 | true that a -- that if an ag -- if an attorney is acting on
12 | behalf of the client and engages in this conduct, the
13 | Commission will hold the client ultimately responsible, the
14 | licensee. The sentence that I'm seeking to strike here from
15 | Paragraph 11, I don't see how they're in any way related to
16 | any possible accused misconduct of Mr. Belendiuk because they
17 | certainly are not -- there is no issue anywhere in this
18 | proceeding of any alleged misconduct of Mr. Belendiuk and if,
19 | indeed, there were such statements or such allegations or such
20 | issues, I would certainly allow evidence or testimony by
21 | Mr. Belendiuk to that affect, but I just don't see how these
22 | sentences I'm seeking to strike relate to any possible
23 | misconduct by counsel.

24 | JUDGE GONZALEZ: Yeah, I agree, I think it's a close
25 | call but I --

1 MR. HARDMAN: I can -- Your Honor, I --

2 JUDGE GONZALEZ: No, I've decided, I'll rule in
3 favor of the Bureau and we'll strike this first -- although I
4 will admit it's a close call, those two sentences, and you
5 mentioned something about therefore?

6 MR. WEBER: Well, just -- I would just strike the
7 work "therefore" because otherwise it won't make any sense
8 without the preceding sentences.

9 JUDGE GONZALEZ: Oh, it won't make any sense, in
10 other words, the next sentence will begin with "I asked Don
11 Nelson." All right, the next objection.

12 MR. WEBER: Paragraph 12 I would strike also as
13 irrelevant.

14 JUDGE GONZALEZ: Mr. Emmons?

15 MR. EMMONS: The very same point, Your Honor, we
16 have to know what happened in order to know whether the
17 beliefs of the U. S. Cellular witnesses are plausible when
18 they say as they all say that they --

19 JUDGE GONZALEZ: Well, my problem is that there's no
20 indication that information was relayed, in this paragraph at
21 least, to the TDS people or that the TDS people had any
22 knowledge of this --

23 MR. EMMONS: Well, in Mr. Brady's --

24 JUDGE GONZALEZ: -- I think absent that foundation,
25 I don't know that can -- how that would be any different than

1 the previous --

2 MR. SCHNEIDER: But that -- may I -- may I be heard
3 on this, Your Honor, I'm sorry.

4 JUDGE GONZALEZ: Yes, sir.

5 MR. SCHNEIDER: There is a more basic point here,
6 that amendment is quoted in the Bill of Particulars. I think
7 it's appropriate to have in the record who signed the
8 amendment and who swore to the accuracy of the amendment in
9 this case. We may believe that the amendment is accurate but
10 can --

11 JUDGE GONZALEZ: Well, the amendment will be
12 admitted into the record, won't it at some point?

13 MR. WEBER: Yes, it is.

14 MR. SCHNEIDER: All right, and --

15 JUDGE GONZALEZ: And it'll have his name on it.

16 MR. SCHNEIDER: I think that this would complete the
17 circle by having somebody with personal knowledge -- I also
18 would like to make one response to your concern because I
19 think it's consistent with one of your prior rulings and that
20 is that this test -- each sentence -- if each sentence of a
21 piece of testimony were required to explain in detail how it
22 relates to each other piece of testimony or statement it would
23 be quite long and deep --

24 JUDGE GONZALEZ: Yeah, well, I agree and I don't
25 want you to take that to -- as too controlling -- Mr. --

1 MR. SCHNEIDER: And there are state -- yeah -- no,
2 because there are statements in other parts of the --

3 JUDGE GONZALEZ: But I think in this case, since
4 we're going to have the amendment as part of the record, I
5 mean his signature will be on it --

6 MR. SCHNEIDER: Okay, okay.

7 JUDGE GONZALEZ: -- we'll strike that as well, that
8 paragraph. Any further objections, Mr. Weber?

9 MR. WEBER: Yes, we'd also move to strike
10 Paragraph 14 as irrelevant, this paragraph discusses about
11 what there was an interim application filed and there is no
12 issue in the Bureau's Bill of Particulars which goes to why
13 the interim application was filed.

14 JUDGE GONZALEZ: I'm sorry, I just -- finish reading
15 the paragraph. Sir.

16 MR. EMMONS: Well, it's the same point, Your Honor,
17 it truly is, it -- this corroborates the plausibility and the
18 credibility of U. S. Cellular's statements that they believed
19 that Mr. Belendiuk was the one who was in charge of the
20 litigation, not themselves, they believed that Mr. Belendiuk
21 was communicating with SJI and in the last sentence or two or
22 three sentences of the paragraph it corroborates Mr. Nelson's
23 -- the plausibility of his belief, in fact, it's directly --
24 relates to his state of mind because it says, I also contacted
25 Don Nelson of USCC, I told him what I was considering and that

1 SJI was in favor of the proposal, he too expressed his support
2 for going forward. Certainly those last three sentences can't
3 be excluded on any theory I've heard from the other side. In
4 fact, I would read from Mr. Weber's comments earlier that that
5 thought could be admissible because it --

6 JUDGE GONZALEZ: Do you agree, Mr. Weber?

7 MR. WEBER: Other than in light of Mr. Emmons
8 argument I would amend that to say -- I'd strike it all the
9 way until the last three sentences, although the word "also"
10 probably should be stricken from the third to last sentence.

11 MR. SCHNEIDER: Your Honor, I --

12 MR. WEBER: We would allow the last three sentences.

13 MR. SCHNEIDER: Your Honor, we believe the entire
14 paragraph is relevant, while there is an issue raised in the
15 Bill of Particulars as to whether or not TDS's statements
16 about its involvement in the preparation and filing of the
17 Bill of -- of the interim operating application were correct
18 and true and this discussion provides you with the counsel
19 who -- the very counsel who was involved in prep -- in the --

20 JUDGE GONZALEZ: Yeah, I -- and not only that, but I
21 think that if we strike the first couple of sentences, that
22 we'll lose a lot of the meaning of the paragraph, I think I
23 have to have some reference so the objection will be overruled
24 and that entire paragraph will remain part of the record. Any
25 further objections?

1 MR. WEBER: Yes, I would strike Paragraph 18 as
2 irrelevant.

3 MR. SCHNEIDER: Your Honor --

4 JUDGE GONZALEZ: Excuse me, if I could just finish
5 reading it.

6 MR. SCHNEIDER: I'm sorry, I apologize.

7 JUDGE GONZALEZ: Yes, sir.

8 MR. SCHNEIDER: Your Honor, we believe it's relevant
9 for much the same reasons as the prior paragraph you allowed
10 in was relevant. It's the following segment, there will be
11 challenges to the truthfulness or candor of statements made by
12 TDS concerning the reasons it was involved or to the extent to
13 which it was involved in the preparation of the interim
14 operating application and what we're -- what this paragraph
15 does is provides first hand testimony from a person who -- the
16 attorney was involved in preparing that application as to who
17 he used from U. S. Cellular and why he used them. This will,
18 if not answer the question, certainly corroborate the
19 impression that will later be indicated on various -- at
20 various times by United States Cellular's witnesses about the
21 extent to which they were involved and why they believe they
22 were involved.

23 JUDGE GONZALEZ: Mr. Weber.

24 MR. WEBER: I would say that although this sentence
25 may allow us into the mind of Mr. Belendiuk, it does nothing

1 to get us into the mind of Mr. Nelson and Mr. Nelson's mind,
2 obviously, is part of -- deals with the designated issues, not
3 Mr. Belendiuk's mind.

4 MR. SCHNEIDER: But I offer the following simply
5 syllogism for proof of why this is relevant. If Mr. Weber
6 tells me that he spoke with his boss, I may or may not believe
7 him. Now, if Mr. -- I will believe him, I assure you, but if
8 there is a question, Mr. Weber's boss may appear and tell you,
9 I spoke with Mr. Weber, certainly if I had any doubts about
10 Mr. -- the veracity of Mr. Weber's statement that he believed
11 he'd spoken with his boss, they are likely eliminated by the
12 appearance of Mr. Weber's boss with the intonation to me that
13 he has, in fact, conversed with Mr. Weber. This is, in point
14 of fact, a large part of what we're doing here. It -- we are
15 trying to tell the entire story so that in context with
16 corroboration you will understand the reasonableness of an
17 individual's basis for their beliefs. I can understand the
18 fear that some of this information is relevant to other issues
19 that we have promised not to retry here but in the guise of
20 not retrying issues, we must be sure that we leave a record on
21 which we can try this one that's fair to the witnesses.

22 JUDGE GONZALEZ: Well, my problem with it is, I just
23 don't know what evidentiary value in view of the fact that it
24 says, he's not really sure who he spoke to, he said probably
25 Don Nelson but he's not certain it was Don Nelson.

1 MR. SCHNEIDER: Well, I think on cross --

2 JUDGE GONZALEZ: I mean, what finding can we make
3 from that, I mean, it could have been a clerk, it could have
4 been a -- it could have been the receptionist.

5 MR. SCHNEIDER: There is no doubt that he spoke with
6 someone at USCC, I think that -- one of the reasons the word
7 probably may be in there, Your Honor, is because we are making
8 great pains in his testimony to be absolutely accurate and
9 these things occurred for very brief periods of time a long
10 time ago. What you could make a finding from this is that
11 there may be other information that corroborates this, the
12 rest of the paragraph does speak to relevant issues, I mean,
13 whether he was -- that he was concerned about the cost, that
14 he spoke with somebody from USCC, probably Don Nelson and it
15 was because of USCC's cellular operating experience. If in
16 your -- if, in the end, you feel that the inclusion of the
17 term probably after a cross-examination of Mr. Belendiuk
18 deprives this of its weight, then you'll make that finding but
19 I think if Mr. Weber's boss appeared before me and say, I
20 spoke to someone in my staff, probably Joe Weber, you would
21 have the view that there was some corroboration in that,
22 albeit a bit less, than if it didn't say probably and --

23 MR. WEBER: Your Honor, there's no issue here that I
24 can think of in the Bureau's Bill of Particulars which deals
25 with whether or not Mr. Nelson or anybody at USCC spoke to

1 Mr. Belendiuk at any time about the costs here, whether the
2 costs were for building a system were sufficient.

3 Mr. Belendiuk's reason for wanting to talk to somebody at
4 USCC, I just -- I fail to see the relevance.

5 MR. SCHNEIDER: I can address that point directly.
6 There are some general allegations that have been made about
7 the accuracy or truthfulness or candor of testimony about not
8 specific instances of involvement with USCC but the general
9 involvement of USCC. Why were we involved in a project at
10 all, why were we involved in certain prosecution actions at
11 all. What we've done -- I'll make two points about it, what
12 we've done here is give you a specific example that will
13 corroborate the general statements made by the individual, by
14 Mr. Nelson. Why did you believe you were being contacted
15 about anything and he will -- he may make a statement about
16 that. This specific instance corroborates his general
17 statement. Second, again, I must indicate that one of the
18 things TDS or United States Cellular has been accused of s not
19 providing all the information about its activities. This
20 paragraph tells the complete story.

21 JUDGE GONZALEZ: Yeah, no, I have problems with that
22 and I'll sustain the objection. All right, next --

23 MR. HARDMAN: I'm sorry, Your Honor, you said
24 you'll --

25 JUDGE GONZALEZ: Sustain the objection with respect

1 to that paragraph. Any further objections?

2 MR. WEBER: Yes, Your Honor, in Paragraph 23 I would
3 strike the last two sentences.

4 JUDGE GONZALEZ: Beginning with "moreover"?

5 MR. WEBER: It starts, moreover LaStar had told,
6 yes, and again, this is irrelevant.

7 JUDGE GONZALEZ: Yeah, what is the relevance of
8 that, who wants to respond to that?

9 MR. EMMONS: I'll respond to that, Your Honor, the -
10 - this paragraph explains Mr. Belendiuk's reasons for
11 proposing to his client the partnership that the partnership
12 be amended after the hearing designation order came out and
13 one of the reasons he made that proposal is the very reason
14 stated in the moreover sentence that Mr. Weber has identified,
15 namely that the -- that LaStar had told the Commission in an
16 earlier pleading that is the Commission had a problem with the
17 joint venture agreement, the partnership would amend it, that
18 was the reason for Mr. Belendiuk's proposal and like the rest
19 of the paragraph, that explains his actions and, more to the
20 point, his recommendation to his client. Likewise, the last
21 sentence, my research indicated, explains his recommendation,
22 he made the recommendation in part because he understood that
23 the commission had in pre -- in similar cases accepted the
24 kind of amendment that he was proposing.

25 JUDGE GONZALEZ: Why don't you object to the entire

1 paragraph, why did you signal out -- why did you signal out
2 just those two sentences?

3 MR. WEBER: Now that I'm rereading it, I'm
4 questioning that myself. Actually I could move to strike the
5 whole thing, I don't see anything here where any of
6 Mr. Belendiuk's beliefs were directly passed on to the USCC
7 witnesses.

8 JUDGE GONZALEZ: Yeah, I think it's just musings of
9 Mr. Belendiuk.

10 MR. SCHNEIDER: But they are his -- they are --
11 there are certainly statements to that effect in other
12 people's testimony who are confident to testify.

13 JUDGE GONZALEZ: Well, I have problems with that,
14 the entire paragraph having read it, and if the objection is
15 to the entire paragraph, I assume that's what it is now,
16 Mr. Weber?

17 MR. WEBER: I'll move that, yes.

18 JUDGE GONZALEZ: All right, it's stricken. All
19 right, any further objections?

20 MR. WEBER: Yes, Your Honor, I would move to strike
21 Paragraph 40 on Page 20.

22 MR. EMMONS: On Page 21?

23 MR. WEBER: 40 on Page 20.

24 MR. EMMONS: On Page 20, sure, okay.

25 JUDGE GONZALEZ: Do you want to be -- state the

1 | nature of your objection, sir?

2 | MR. WEBER: Oh, I'm sorry, yes, Your Honor, I don't
3 | believe that this is relevant, that what they conveyed to
4 | counsel is not relevant to the issues designated.

5 | MR. EMMONS: Your Honor, this refers to Mr. Naftelan
6 | and Mr. Miller who were counsel for U. S. Cellular and one of
7 | the things that certainly is relevant in this proceeding is
8 | what they believed the relationship between U. S. Cellular and
9 | LaStar and because they were counsel for U. S. Cellular, they
10 | were agents of U. S. Cellular, their beliefs were relevant to
11 | what they advised and what they didn't advise their client and
12 | their beliefs were also relevant to the extent that their own
13 | conduct could theoretically be an issue under Commission law.
14 | So this testimony establishes what the working relationship
15 | was between Mr. Belendiuk on the one hand and Mr. Naftelan and
16 | Mr. Miller on the other hand and it is evidence from which the
17 | Commission could find that Mr. Naftelan and Mr. Miller did not
18 | believe that their client was in control of this partnership.

19 | MR. SCHNEIDER: And with respect, Your Honor, to
20 | Mr. Carlson who is a principle of TDS, the fact that behind
21 | closed doors when no one was watching, he expressed in strong
22 | terms the view that TDS and USCC did not control -- will be
23 | reflective of the state of mind. Certainly if the reverse had
24 | been true, I think you would find that that re -- that
25 | statement to be evidence. The fact that they've expressed

1 | privately their view that they did not believe these things
2 | will, I think, be relevant evidence on their beliefs.

3 | MR. WEBER: Actually upon their argument and
4 | reconsideration, I will withdraw that motion to strike.

5 | JUDGE GONZALEZ: Yeah, I -- that would have been my
6 | ruling, I -- the weight, of course, will be argued.

7 | MR. HARDMAN: Your Honor.

8 | JUDGE GONZALEZ: Yes, sir.

9 | MR. HARDMAN: It may be more efficient for the most
10 | part, the Bureau -- retract on our objection, but there were -
11 | - I do have some objections to Paragraphs 30 through 32 which
12 | the Bureau evidently did not -- do we want to come back to
13 | that or would it be better to take them in sequence as we go
14 | through the testimony?

15 | JUDGE GONZALEZ: I think really I'd rather just
16 | continue to hear his objections, the Bureau's objections --

17 | MR. HARDMAN: Okay.

18 | JUDGE GONZALEZ: -- only I think it would be a
19 | little neater and I won't lose track of who is going forward.

20 | MR. HARDMAN: Okay.

21 | JUDGE GONZALEZ: Go ahead.

22 | MR. WEBER: All right, I would also move to strike
23 | Paragraphs 42 and 43 as irrelevant. Both paragraphs --

24 | JUDGE GONZALEZ: Excuse me, excuse me.

25 | MR. WEBER: Both --

1 JUDGE GONZALEZ: All right, yes, sir.

2 MR. WEBER: I mean, both paragraphs are replete with
3 statements by Mr. Belendiuk of what he was trying to do in
4 various pleadings or rather in the motion for summary decision
5 and Mr. -- what Mr. Belendiuk was trying to do and what his
6 opinion was is not relevant to the designated issues.

7 JUDGE GONZALEZ: I'll have to read through, Counsel,
8 give me a minute to --

9 (Pause while Judge reads material.)

10 JUDGE GONZALEZ: Mr. Emmons or Mr. Schneider?

11 MR. EMMONS: Your Honor, yes, in the Bill of
12 Particulars it spends the better part of two pages, Pages 8
13 through 10 quoting from the motion for a summary decision,
14 that is the subject of these two paragraphs and concludes
15 generally at the end by saying we'd raise a question about
16 whether U. S. Cellular was candid. This testimony is directly
17 relevant because the testimony and the evidence shows that
18 Mr. Belendiuk and his firm were the principle author of the
19 pleading that is referenced in Paragraph 42 and Paragraph 43
20 and as I have mentioned before, rightly or wrongly, the
21 Commission in its earlier decision found that Mr. Belendiuk
22 was essentially the agent of U. S. Cellular in the LaStar
23 proceeding. That puts directly into question whether
24 Mr. Belendiuk's pleading was candid, that's the question that
25 the Bureau has raised in the Bill of Particulars and the